



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

#### **SPECIAL ORDER BY CONSENT**

#### **ISSUED TO**

#### **ROCKBRIDGE FARMERS COOPERATIVE, INCORPORATED**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d), between the State Water Control Board and Rockbridge Farmers Cooperative, Incorporated ("RFC") for the purpose of resolving certain violations of environmental laws and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Special Order.
6. "RFC" or the "Company" means the Rockbridge Farmers Cooperative, Incorporated.
7. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
8. "VPDES" means Virginia Pollutant Discharge Elimination System.
9. "NOV" means Notice of Violation.
10. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. RFC is a privately held farm supply merchant company located in Lexington, Rockbridge County. The company supplies and applies fertilizers and herbicides in Rockbridge County, Virginia.
2. On May 23, 2008, DEQ received a pollution complaint regarding a spill to an unnamed tributary to the Maury River. On May 23, 2008, DEQ staff conducted an investigation of the pollution complaint during which DEQ determined that the emergency brake of an RFC truck carrying 400 gallons of herbicide (a solution of 1% Weedone [2, 4-D] and 2% Roundup, [glyphosate]) failed, allowing the truck to run down an incline, roll over and spill its load of herbicides into an unnamed tributary to the Maury River. DEQ's investigation of the incident revealed that the release of these chemicals resulted in an unpermitted discharge to State waters and further determined that the failure of the emergency brake was an unforeseen event and not due to improper maintenance or driving procedures on the part of RFC or its employees. Staff observed a kill of hundreds of tadpoles, and some salamanders and worms below the point where the truck rolled over into the tributary and spilled the herbicides and continuing downstream about 400 meters. The majority of the kill occurred in a 10 meter ponded segment of the tributary. No dead organisms were found upstream of where the spill occurred.

Staff also observed that RFC and its spill contractors had taken prompt action and installed a number of containment booms and check/containment dams in the impacted reach of tributary to help prevent the spill from moving downstream.

DEQ conducted sampling above and below the spill location.

Sampling results on May 23, 2008 were as follows:

| Site                             | Glyphosate (µg/L) | 2,4-D (µg/L)      |
|----------------------------------|-------------------|-------------------|
| Tributary below entry point      | 490 µg/L (ppb)    | 29,000 µg/L (ppb) |
| Tributary upstream of spill      | <1.0 µg/L (ppb)   | <1.0 µg/L (ppb)   |
| Tributary below containment dams | 250 µg/L (ppb)    | 15,000 µg/L (ppb) |

3. Virginia Code § 62.1-44.5 and the Regulation 9 VAC 25-31-50 A. stipulate that except in compliance with a VPDES permit issued by the Board, it shall be unlawful for any person to discharge sewage, industrial wastes, other wastes into state waters.

Virginia Code § 62.1-44.3 includes corporation within the definition of “person”. RFC is a “person” under the statute. The Code also defines “other wastes” to include any substance that may cause pollution of state waters. “Pollution” is defined by Virginia Code § 62.1-44.3 to include the alteration of state waters in a manner which makes them detrimental to aquatic life. Herbicides are an “other waste” under the statute.

“State waters” is defined by Virginia Code § 62.1-44.3 to include all water above and below the surface of the ground and within the Commonwealth. The unnamed tributary to the Maury River is a “state water”.

The Department has never issued a permit to RFC for the discharge of herbicides. RFC violated the Code and the VPDES Permit Regulation by discharging herbicides without a permit issued by the Board.

4. DEQ issued NOV No. W2008-06-V-002 on July 7, 2008, to RFC for the unpermitted discharge of herbicides on May 23, 2008 in violation of Virginia Code § 62.1-44.5 and the VPDES Permit Regulation 9 VAC 25-31-50 A.
5. On August 12, 2008, DEQ met with representatives of RFC to discuss the violations cited in the NOV and the circumstances that led up to the unpermitted discharge. During the August 12, 2008, meeting, RFC confirmed that the emergency brake failure was an anomaly and not related to poor maintenance or operational procedures on its part. RFC confirmed that it acted expeditiously to address the spill by immediately taking actions to contain the spill and to contact regulatory agencies, including DEQ, for advice and assistance in taking corrective actions necessary to address the spill.

6. There are no further corrective actions necessary to resolve the violations cited in this Order.

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders RFC and RFC voluntarily agrees, to pay a civil charge of **\$9,100** within **30 days** of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check, RFC shall: 1) indicate that the check is submitted pursuant to this Order, and 2) include its Federal Identification Number.

2. Submit to the Department, at the address shown above, a **separate check** payable to the "Treasurer of Virginia", a check in the amount of **\$1,978.04** to cover DEQ's costs in the pollution incident investigation. RFC shall submit the check **within 30 days** of the effective date of the Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of RFC, for good cause shown by RFC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the spill as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, RFC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. RFC consents to venue in the Circuit Court of Richmond for any civil action taken to enforce the terms of this Order.

5. RFC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by RFC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. RFC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. RFC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. RFC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which RFC intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and RFC. Notwithstanding the foregoing, RFC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. RFC petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
  - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to RFC.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve RFC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Rockbridge Farmers Cooperative, Incorporated voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8<sup>th</sup> day of December, 2008.

  
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Amy T. Owens, Regional Director  
Department of Environmental Quality

The Rockbridge Farmer's Cooperative, Incorporated voluntarily agrees to the issuance of this Order.

By: Wilson Whitmore

Title: GENERAL MANAGER

Date: 10-12-08

Commonwealth of Virginia

City/County of Rockbridge

The foregoing document was signed and acknowledged before me this

12 day of October, 2008, by Wilson Whitmore,  
(name)

who is General Manager of the Rockbridge Farmer's Cooperative, Incorporated on behalf  
(title)  
of said Company.

J P Black  
Notary Public

My commission expires: 04-30-2011

